

(E) Explanation of how and where workers should apply for TAA benefits and services.

(e) *Advice and assistance to workers.* In addition to the information and assistance to workers as required under paragraphs (a) and (b) of this section, State agencies shall—

(1) Advise each worker who applies for unemployment insurance under the State law of the benefits available under subparts B through E of this part and the procedures and deadlines for applying for such benefits.

(2) Facilitate the early filing of petitions under section 221 of the Act and § 617.4(b) for any workers that the agency considers are likely to be eligible for benefits. State agencies shall utilize information received by the State's dislocated worker unit to facilitate the early filing of petitions under section 221 of the Act by workers potentially adversely affected by imports.

(3) Advise each adversely affected worker to apply for training under § 617.22(a) before, or at the same time as, the worker applies for trade readjustment allowances under subpart B of this part.

(4) Interview each adversely affected worker, as soon as practicable, regarding suitable training opportunities available to the worker under § 617.22(a) and review such opportunities with the worker.

[51 FR 45848, Dec. 22, 1986, as amended at 59 FR 927, Jan. 6, 1994]

Subpart B—Trade Readjustment Allowances (TRA)

§ 617.10 Applications for TRA.

(a) *Before and after certification.* An individual covered under a certification or a petition for certification may apply to a State agency for TRA. A determination shall be made at any time to the extent necessary to establish or protect an individual's entitlement to TRA or other TAA, but no payment of TRA or other TAA may be made by a State agency until a certification is made and the State agency determines that the individual is covered thereunder.

(b) *Timing of applications.* An initial application for TRA, and applications for TRA for weeks of unemployment beginning before the initial application for TRA is filed, may be filed within a reasonable period of time after publication of the determination certifying the appropriate group of workers under section 223 of the Act. However, an application for TRA for a week of unemployment beginning after the initial application is filed shall be filed within the time limit applicable to claims for regular compensation under the applicable State law. For purposes of this paragraph (b), a reasonable period of time means such period of time as the individual had good cause for not filing earlier, which shall include, but not be limited to, the individual's lack of knowledge of the certification or misinformation supplied the individual by the State agency.

(c) *Applicable procedures.* Applications shall be filed in accordance with this subpart B and on forms which shall be furnished to individuals by the State agency. The procedures for reporting and filing applications for TRA shall be consistent with this part 617 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services", *Employment Security Manual*, part V, sections 5000 *et seq.* (Appendix A of this part).

(d) *Advising workers to apply for training.* State agencies shall advise each worker of the qualifying requirements for entitlement to TRA and other TAA benefits at the time the worker files an initial claim for State UI, and shall advise each adversely affected worker to apply for training under subpart C of this part before, or at the same time, the worker applies for TRA, as required by § 617.4(e)(1) and (3).

[51 FR 45848, Dec. 22, 1986, as amended at 59 FR 928, 943, Jan. 6, 1994]

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement—(1) Prior to November 21, 1988.* To qualify for TRA for any week of unemployment that begins prior to November 21, 1988, an individual must meet each of the following requirements of paragraphs (a)(1) (i) through (vii) of this section:

§617.11

20 CFR Ch. V (4-1-05 Edition)

(i) *Certification.* The individual must be an adversely affected worker covered under a certification.

(ii) *Separation.* The individual's first qualifying separation (as defined in paragraph (t)(3)(i) of §617.3) before application for TRA must occur:

(A) On or after the impact date of such certification; and

(B) Before the expiration of the two-year period beginning on the date of such certification, or, if earlier, before the termination date, if any, of such certification.

(iii) *Wages and employment.* (A) In the 52-week period (*i.e.*, 52 consecutive calendar weeks) ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in §617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(B)(1) For the purposes of paragraph (a)(1)(iii) of this section, any week in which such individual—

(i) is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training, or

(ii) does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(iii) had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision, shall be treated as a week of employment at wages of \$30 or more;

(2) *Provided*, that—

(i) not more than 7 weeks in the case of weeks described in paragraph (a)(1)(iii)(B)(1)(i) or paragraph (a)(1)(iii)(B)(1)(ii) of this section, or both, and (ii) not more than 26 weeks described in paragraph (a)(1)(iii)(B)(1)(ii) of this section, may be treated as weeks of employment for purposes of paragraph (a)(1)(iii) of this section.

(C) Wages and employment creditable under paragraph (a)(1)(iii) of this section shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(iv) *Entitlement to UI.* The individual must have been entitled to (or would have been entitled to if the individual had applied therefor) UI for a week within the benefit period—

(A) in which the individual's first qualifying separation occurred, or

(B) which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(v) *Exhaustion of UI.* The individual must:

(A) Have exhausted all rights to any UI to which the individual was entitled (or would have been entitled to if the individual had applied therefor); and

(B) Not have an unexpired waiting period applicable to the individual for any such UI.

(vi) *Extended Benefit work test.* (A) The individual must—

(1) Accept any offer of suitable work, as defined in §617.3(kk), and actually apply for any suitable work the individual is referred to by the State agency, and

(2) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week, and

(3) Register for work and be referred by the State agency to suitable work, in accordance with those provisions of the applicable State law which apply to claimants for Extended Benefits and which are consistent with Part 615 of this Chapter.

(B) The Extended Benefit work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the Extended Benefit work test requirements of paragraph (a)(1)(vi) of this section and §617.17. Prior to such notification and advice, the individual shall not be subject to the Extended Benefit work test requirements, nor to any State timely

filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided for workers in approved training in § 617.17(b)(1).

(vii) *Job search program participation.*

(A) The individual is enrolled in, participating in, or has successfully completed a job search program which meets the requirements of § 617.49(a); or the State agency has determined that no acceptable job search program is reasonably available under the criteria set forth in § 617.49(c).

(B) The job search program requirement shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the job search program requirement of paragraph (a)(1)(vii) of this section and § 617.49.

(C) The job search program requirement shall not apply to an individual, as a qualifying requirement for TRA, with respect to any week ending after November 20, 1988, but cooperating State agencies are encouraged to continue to utilize job search programs after November 20, 1988, as an effective tool to assist adversely affected workers in finding suitable employment, particularly unemployed workers who have completed training or for whom the training requirement has been waived under § 617.19.

(2) *On and after November 21, 1988.* To qualify for TRA for any week of unemployment that begins on or after November 21, 1988, an individual must meet each of the following requirements of paragraphs (a)(2) (i) through (vii) of this section:

(i) *Certification.* The individual must be an adversely affected worker covered under a certification.

(ii) *Separation.* The individual's first qualifying separation (as defined in paragraph (t)(3)(i) of § 617.3) before application for TRA must occur:

(A) On or after the impact date of such certification; and

(B) Before the expiration of the two-year period beginning on the date of

such certification, or, if earlier, before the termination date, if any, of such certification.

(iii) *Wages and employment.* (A) In the 52-week period (*i.e.*, 52 consecutive calendar weeks) ending with the week of the individual's first qualifying separation, or any subsequent total qualifying separation under the same certification, the individual must have had at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(B)(1) For the purposes of paragraph (a)(2)(iii) of this section, any week in which such individual—

(i) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training, or

(ii) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(iii) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision, or

(iv) Is on call-up for the purpose of active duty in a reserve status in the Armed Forces of the United States (if such week began after August 1, 1990), provided such active duty is "Federal service" as defined in part 614 of this chapter,

shall be treated as a week of employment at wages of \$30 or more;

(2) *Provided, that—*

(i) Not more than 7 weeks in the case of weeks described in paragraph (a)(2)(iii)(B)(1) (i) or (iii) of this section, or both, and

(ii) Not more than 26 weeks described in paragraph (a)(2)(iii)(B)(1) (ii) or (iv) of this section,

may be treated as weeks of employment for purposes of paragraph (a)(2)(iii) of this section.

§617.11

20 CFR Ch. V (4-1-05 Edition)

(C) Wages and employment creditable under paragraph (a)(2)(iii) of this section shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(iv) *Entitlement to UI.* The individual must have been entitled to (or would have been entitled to if the individual had applied therefor) UI for a week within the benefit period—

(A) in which the individual's first qualifying separation occurred, or

(B) which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(v) *Exhaustion of UI.* The individual must:

(A) Have exhausted all rights to any UI to which the individual was entitled (or would have been entitled if the individual had applied therefor); and

(B) Not have an unexpired waiting period applicable to the individual for any such UI.

(vi) *Extended Benefit work test.* (A) The individual must—

(1) Accept any offer of suitable work, as defined in §617.3(kk), and actually apply for any suitable work the individual is referred to by the State agency, and

(2) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week, and

(3) Register for work and be referred by the State agency to suitable work, in accordance with those provisions of the applicable State law which apply to claimants for Extended Benefits and which are consistent with part 615 of this chapter.

(B) The Extended Benefit work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the Extended Benefit work test requirements of paragraph (a)(2)(vi) of this section and §617.17. Prior to such notification and advice, the individual shall not be subject to the Extended Benefit work test requirements, nor to any State timely

filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided in §617.17(b)(2) for workers enrolled in, or participating in, a training program approved under §617.22(a).

(vii) *Participation in training.* (A) The individual must—

(1) Be enrolled in or participating in a training program approved pursuant to §617.22(a), or

(2) Have completed a training program approved under §617.22(a), after a total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, or

(3) Have received from the State agency a written statement under §617.19 waiving the participation in training requirement for the individual.

(B) The participation in training requirement of paragraph (a)(2)(vii) of this section shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the participation in training requirement of paragraph (a)(2)(vii) of this section and §617.19.

(C) The participation in training requirement of paragraph (a)(2)(vii) of this section shall apply, as a qualifying requirement for TRA, to an individual with respect to claims for TRA for weeks of unemployment commencing on or after November 21, 1988, and beginning with the first week following the week in which a certification covering the individual is issued under the Act, unless the State agency has issued a written statement to the individual under §617.19 waiving the participation in training requirement for the individual.

(D) For purposes of paragraph (a)(2)(vii) of this section, the following definitions shall apply:

(1) *Enrolled in Training.* A worker shall be considered to be enrolled in training when the worker's application for training is approved by the State agency and the training institution has

furnished written notice to the State agency that the worker has been accepted in the approved training program which is to begin within 30 calendar days of the date of such approval. (A waiver under § 617.19 shall not be required for an individual who is enrolled in training as defined herein.)

(2) *Completed Training.* A worker shall be considered to have completed a training program if the training program was approved, or was approvable and is approved, pursuant to § 617.22, and the training was completed subsequent to the individual's total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, and the training provider has certified that all the conditions for completion of the training program have been satisfied.

(3) *Special rules for workers separated in 1981 to 1986 period.* (i) *Basic conditions.* Under section 1425(b) of the Omnibus Trade and Competitiveness Act of 1988 (the "OTCA") (Pub. L. 100-418) the time limit on the eligibility period for basic TRA in section 233(a)(2) of the Act (before and after the amendment by Public Law 100-418), and the 210-day time limit in section 233(b) of the Act on the filing of a bona fide application for training in order to qualify for additional TRA, are set aside and shall be disregarded for any individual separated from adversely affected employment in the period which began on August 13, 1981, and ended on April 7, 1986: *Provided,* That, any such individual must meet all of the following requirements of paragraphs (a)(3)(i)(A) through (E) of this section to qualify for TRA for any week.

(A) *Period of separation.* The separation of the individual must have occurred on a date within the period which began on August 13, 1981 and ended on April 7, 1986.

(B) *Total separation required.* Such separation must be a "total separation" as defined in § 617.3(l), and a "total qualifying separation" as defined in § 617.3(t)(3)(i)(B); and, for the purposes of determining whether an individual has been continuously unemployed, as defined in § 617.3(t)(3)(i)(E), only the last such total separation

within the August 13, 1981 to April 7, 1986 period shall be taken into account.

(C) *Other standard requirements.* The individual must, with respect to such total separation, meet all of the requirements of paragraphs (a)(2)(i) through (v) of this section.

(D) *Participation in training.* (1) The individual must meet the requirements of paragraph (a)(2)(vii) of this section, with respect to being enrolled in or participating in a training program approved pursuant to § 617.22(a), as to each week TRA is claimed, and not be ineligible under § 617.18(b)(2) for failure to begin participation in such training or for ceasing to participate in such training.

(2) With respect to participation in training, as required under paragraph (a)(3) of this section, the break in training provisions of § 617.15(d) shall be applicable, and the waiver of participation provisions in § 617.19 shall not be applicable.

(E) *Continuously unemployed.* (1) The individual must have been continuously unemployed since the date of the individual's total separation referred to in paragraph (a)(2)(vii)(B) of this section, not taking into account for the purposes of this determination any work in which the individual was employed in seasonal employment, odd jobs, or part-time, temporary employment.

(2) For purposes of § 617.11(a)(3)(i)(E)(1), continuously unemployed shall mean the individual has not been engaged in any employment, except for seasonal employment, odd-jobs, or part-time, temporary employment. Employment shall be considered:

(i) *Seasonal employment* when seasonality provisions of the applicable State law are applicable to such employment; or

(ii) An *odd job* when the established period of employment occurs within five (5) consecutive days or less; or

(iii) *Part-time, temporary employment* when a termination date of one hundred fifty (150) days or less was established at the time of employment, and the average weekly hours for the job, over the period of employment, was less than 30 hours per week.

(ii) *TRA payments prospective only.* The provisions of paragraph (a)(3) of this section apply to payments of TRA only for weeks which begin after August 23, 1988, and with respect to training in which the individual becomes enrolled and begins participation before or after such date, and which is approved under § 617.22(a) before or after such date. No payment of TRA may be authorized under paragraph (a)(3) of this section for any week which ends before such training is approved under § 617.22(a).

(iii) *Other special rules.* (1) Although the last total qualifying separation of an individual will be used for the purposes of the determination under paragraph (a)(3)(i)(B) of this section, the individual's first qualifying separation (as defined in paragraph (t)(3)(ii) of § 617.3) must be used to determine the weekly and maximum amounts payable to the individual in accordance with §§ 617.13 and 617.14.

(2) No individual shall be determined to be eligible for TRA under paragraph (a)(3) of this section if the individual has previously received all of the basic and additional TRA to which the individual was entitled.

(3) The 26-week eligibility period for additional TRA is applicable under paragraph (a)(3) of this section, as such term is defined in paragraph (m)(2) of § 617.3.

(4) *Special rules for oil and gas workers—retroactive—*(i) *Basic conditions.* Under section 1421(a)(1)(B) of the OTCA, individuals employed by independent firms engaged in exploration or drilling for oil and natural gas who were separated after September 30, 1985, may be entitled, retroactively, to TAA program benefits, but only if, as to any such individual, all of the conditions in the following provisions of paragraph (a)(4) of this section are met.

(ii) *Prior certification.* Individuals covered by this paragraph (a)(4) do not include any individual covered under a certification (made with respect to the same firm or subdivision of a firm) that was issued under section 223 of the Act without regard to the amendments to section 222 of the Act (relating to oil and gas workers) made by section 1421(a)(1)(A) of the OTCA.

(iii) *Petition.* (A) To apply for a certification under section 223 covering workers referred to in section 1421(a)(1)(B) of the OTCA, a petition must have been filed in the Office of Trade Adjustment Assistance after August 23, 1988, and on or before November 18, 1988, by or on behalf of a group of workers of such a firm or subdivision of a firm.

(B) A petition, to be valid, may not be signed by or on behalf of an individual referred to in paragraph (a)(4)(ii) of this section.

(iv) *Certification.* (A) As provided in section 1421(a)(1)(B) of the OTCA, a certification issued pursuant to section 223 of the Act will not be subject to the one-year limitation on the impact date which is specified in section 223(b) of the Act, but the impact date of any such certification may not be a date earlier than October 1, 1985.

(B) A certification shall not be issued under the authority of section 1421(a)(1)(B) of the OTCA if a certification could have been issued under section 223 of the Act before or after the amendment made by section 1421(a)(1)(A) of the OTCA.

(v) *Coverage of certification.* Individuals covered by a certification issued under the authority of section 1421(a)(1)(B) of the OTCA will be eligible to apply for TAA program benefits as follows:

(A) Basic and additional TRA, retroactively and prospectively, subject to the conditions stated in paragraph (a)(4) of this section;

(B) Training, prospectively, subject to the conditions stated in subpart C of this part;

(C) Job search allowances, prospectively, subject to the conditions stated in subpart D of this part; and

(D) Relocation allowances, prospectively, subject to the conditions stated in subpart E of this part.

(vi) *TRA entitlement.* To qualify for TRA for any week, an individual must meet all of the following requirements of paragraphs (a)(4)(vi)(A) through (D) of this section;

(A) *Certification.* The individual must be an adversely affected worker covered under a certification issued pursuant to section 223 of the Act and under

the authority of section 1421(a)(1)(B) of the OTCA.

(B) *Date of separation.* The date of the individual's most recent total separation (as defined in § 617.3) must be a date after September 30, 1985, and within the certification period of the certification under which the worker is covered. Separations occurring prior to October 1, 1985, shall be disregarded for the purposes of determining whether an individual experienced a total separation after September 30, 1985.

(C) *Other standard requirements.* (1) With respect to weeks of unemployment that begin after September 30, 1985, but prior to November 21, 1988, the individual must, with respect to the separation referred to in paragraph (a)(4)(vi)(B) of this section, meet all of the requirements of paragraph (a)(1)(i) through (vii) of this section, and

(2) With respect to weeks of unemployment that begin on or after November 21, 1988, the individual must meet all of the requirements of paragraphs (a)(2)(i) through (vii) of this section.

(D) *Other special rules.* (1) Although an individual's most recent total or partial separation after September 30, 1985 must be used for the purposes of this paragraph (a)(4)(vi)(B) of this section, the individual's first qualifying separation (as defined in paragraph (t)(3)(ii) of § 617.3) must be used to determine the weekly and maximum amounts payable to the individual in accordance with §§ 617.13 and 617.14.

(2) The 60-day preclusion rule in paragraph (b)(1) of this section shall not be applicable to an individual covered by a certification referred to in paragraph (a)(4)(vi)(A) of this section, and who is eligible for TRA under the provisions of paragraph (a)(4) of this section.

(3) The 26-week eligibility period for additional TRA (as defined in paragraph (m)(2) of § 617.3) is applicable under paragraph (a)(4) of this section.

(b) *First week of entitlement.* The first week any individual may be entitled to a payment of basic TRA shall be the later of:

(1) The first week beginning more than 60 days after the date of the filing of the petition which resulted in the certification under which the individual is covered (except in the case of

oil and gas workers to whom paragraph (a)(4) of this section applies); or

(2) The first week beginning after the individual's exhaustion of all rights to UI including waiting period credit, as determined under § 617.11(a)(1)(v) or § 617.11(a)(2), as appropriate.

[59 FR 928, Jan. 6, 1994]

§ 617.12 Evidence of qualification.

(a) *State agency action.* When an individual applies for TRA, the State agency having jurisdiction under § 617.50(a) shall obtain information necessary to establish:

(1) Whether the individual meets the qualifying requirements in § 617.11;

(2) The individual's average weekly wage; and

(3) For an individual claiming to be partially separated, the average weekly hours and average weekly wage in adversely affected employment.

(b) *Insufficient data.* If information specified in paragraph (a) of this section is not available from State agency records or from any employer, the State agency shall require the individual to submit a signed statement setting forth such information as may be required for the State agency to make the determinations required by paragraph (a) of this section.

(c) *Verification.* A statement made under paragraph (b) of this section shall be certified by the individual to be true to the best of the individual's knowledge and belief and shall be supported by evidence such as Forms W-2, paycheck stubs, union records, income tax returns, or statements of fellow workers, and shall be verified by the employer.

(d) *Determinations.* The State agency shall make the necessary determinations on the basis of information obtained pursuant to this section, except that if, after reviewing information obtained under paragraph (b) of this section against other available data, including agency records, it concludes that such information is not reasonably accurate, it shall make appropriate adjustments and shall make the determination on the basis of the adjusted data.